

IN THE FAIR WORK COMMISSION

Applicants: **HEALTH SERVICES UNION OF AUSTRALIA and others**

Matter: **APPLICATION TO VARY THE AGED CARE AWARD 2010 and APPLICATION TO VARY THE SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010**

Matter No: **AM2020/99, AM2021/63 & AM2021/65**

HSU's comments on the ABS Census Data on employment in Aged Care Industry -

Introduction

1. The HSU notes the following matters in respect of the ABS Data circulated by the Commission on 14 December 2023 (2021 ABS Data).

Qualifications of personal care workers

2. Although as the tab 'key occupation' summarises the majority of personal care workers have qualifications ranging from certificate II to IV levels, such that the Certificate III remains the 'key' qualification, the tab titled "Edu Detail" shows that:
 - (a) 10% of 'aged or disabled carers' have a Diploma and a further 14% a bachelor degree level qualification;
 - (b) 10.4% of 'Personal Care Assistants' have a diploma level qualification and 16% a bachelor degree level qualification; and
 - (c) 12.6% of 'nursing support workers' have a diploma level qualification and 17.4% have a bachelor degree level qualification,in each case distinct from the occupation of 'enrolled nurse'.
3. Noting that this data records only an individual's highest-achieved qualification rather than all qualifications held by an employee, this data suggests that:
 - (a) first, a classification structure for personal care workers in the Aged Care Award which ends at a Certificate IV level only – as proposed by both the

ANMF and the employer parties – will undervalue the work, as it will fail to reflect the qualifications present in the industry or provide a career path reflective of accumulated skill;

- (b) second, that the basis of the ANMF's analysis of the current classification structure as ending at Certificate IV as the highest level of qualification – that is, that diploma qualifications are not present in direct care outside of enrolled nurses – is unlikely to be correct;
- (c) third, and relatedly, the ANMF contention that the relevant direct care career path post Certificate IV is into a diploma of nursing (that is, becoming an enrolled nurse) and thus a compressed personal care worker structure is appropriate, is also likely does not accurately reflect the reality of the industry; and
- (d) fourth, in analysing this data it must be remembered that the Census question relates to the highest level of education attainment. If an individual has Certificate III or IV but also has a Diploma then only the Diploma is counted in the data set. This may explain the lower levels of Certificate III and IV qualifications for personal care workers than were recorded in the 2016 NACWCS data where directly employed workers reported all the qualifications they held.

Home care workers not included in the data

4. The 2021 ABS Data only includes data on workers who indicated that they worked in in 'Aged Care Residential Services' and does not to include data on home care workers. The HSU refers the Commission to Professor Charlesworth's observation at paragraph 23 of her expert statement dated 31 March 2021 (Tab 199 of Stage 1 Digital Hearing Book), which states that, which states that:

Industry level data is available for aged care residential services (8601), a 4 digit ANZSIC industry code. In single digit ANZSIC industry sectors, such as construction and manufacturing, ABS level data is readily available including in labour force surveys, which provides regular on key features of employment in those sectors. However, the fact 'aged care residential services' is a 4 digit ANZSIC

industry means that industry data which can be cross-tabulated by occupational classifications to identify the key occupational groups working in this industry, is only available in Census data.

5. Home care services are grouped with a diverse range of other community services involved in providing a wide variety of social support directly to clients (excluding accommodation services). For example, at the aggregate level of 'other social assistance' (ANZSIC 8790), 'aged care assistance services' is grouped together with youth welfare, disability assistance services, adoption services, adult day care centre operations, welfare counselling services and marriage guidance services. The absence of disaggregated data with respect to workers providing home care services to aged persons in the community remains a significant gap in the data available with respect to the aged care workforce.

Inclusion of retirement villages

6. The 2021 ABS Data includes workers who are employed in retirement villages. In this regard, the HSU notes that the 2021 Census data relates to the industry of 'Aged Care Residential Services' (ANZSIC 8601), which is described as operations 'mainly engaged in providing residential aged care combined with either nursing, supervisory or other types of care as required (including medical)'. The category specifically includes the following:
 - (a) Accommodation for the aged operation;
 - (b) Aged care hostel operation;
 - (c) Nursing home operation; and
 - (d) Residential care for the aged operation.
7. As a result, it appears to be clear that this category includes retirement villages. In particular, there are 1,028 retirement village managers included in the 2021 ABS Data. Retirement villages are unlikely to be strictly care institutions and customarily involve residents living independently albeit with the availability of some support. For example, in NSW, the definition of a 'retirement village' in s 5(3)(a) of the *Retirement Villages Act 1999* (NSW) specifically excludes any building or any part of a

building used or intended to be used for the provision of residential care within the meaning of the *Aged Care Act 1997* (Cth).

Other matters

8. The 2021 ABS Data is useful in providing the number of residential aged care service workers (being 258,274). However, whilst the data is useful, there are reasons why the Commission might not place too much reliance on the precise figures. In particular, it is significant to note that:

- (a) The total workforce is only slightly higher than estimated in the 2016 National Aged Care Workforce Census and Survey (NACWCS) data on residential aged care, which shows 235,764 directly employed workers and lower than the estimate in the less robust 2020 Aged Care Workforce Census of workforce numbers under the RAC program of 277,671 people.
- (b) The 2021 ABS data includes a number of occupations that do not necessarily fall within the aged care sector, including gynaecologists (15), RN - paediatrics (25), real estate representatives (80), midwives (301) and (as noted above) retirement village managers.
- (c) The 2021 ABS Data also uses the outdated ANZSCO 'aged and disabled carer' occupational classification. The ABS has been doing some work disaggregating this occupation. The proposal is to separate out disability support workers from community support (home care) workers in aged care and residential aged care workers as well as putting in place separate classifications for senior support worker roles in both aged care and disability support.

In addition, the 2021 ABS Data unsurprisingly confirms that the aged care workforce is female dominated.

Maurice Blackburn Lawyers

12 January 2024

From: Penelope Parker <PParker@mauriceblackburn.com.au>
Sent: Friday, January 12, 2024 4:22 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Nigel Ward (ACCI) <Nigel.Ward@ablawyers.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Nick White <nwhite@gordonlegal.com.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Philip Gardner <pgardner@gordonlegal.com.au>
Subject: RE: ABS Census Data on employment in Aged Care Industry - AM2020/99, AM2021/63 & AM2021/65 [MBC-VIC.FID4764043]

OFFICIAL

Dear Associate

I refer to the above, and to your email below.

Please see a copy of the HSU's comments regarding the ABS data **attached**.

The legal representatives for the active parties in these proceedings are included in this email.

Kind regards

Penelope Parker

Senior Associate

T 02 8267 0940

F 02 9261 3318

E pparker@mauriceblackburn.com.au

mauriceblackburn.com.au

Gadigal

Level 29, 161 Castlereagh Street

Sydney NSW 2000

Liability limited by a scheme approved under Professional Standards Legislation.

Our office has moved.

Our Sydney office has moved to a fresh new space as of the 27th of November 2023.

From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Thursday, 4 January 2024 12:54 PM
To: Penelope Parker <PParker@mauriceblackburn.com.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Nigel Ward (ACCI) <Nigel.Ward@ablawyers.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Nick White <nwhite@gordonlegal.com.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Philip Gardner <pgardner@gordonlegal.com.au>
Subject: RE: ABS Census Data on employment in Aged Care Industry - AM2020/99, AM2021/63 & AM2021/65 [MBC-VIC.FID4764043]

CAUTION: This email originated from outside of the organisation . Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

Dear Ms Parker,

I advise that Justice Hatcher has granted your request for an extension of time to provide your comments on the ABS data. Comments are now due by COB 12 January 2024.

Kind regards,

Mirella Franceschini
Associate to Justice Hatcher
President



Fair Work Commission

Australia's national workplace relations tribunal

Level 8/11 Exhibition Street
Melbourne 3000

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Wurundjeri Woi Wurrung Country.

From: Penelope Parker <PParker@mauriceblackburn.com.au>

Sent: Thursday, January 4, 2024 11:21 AM

To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Nigel Ward (ACCI) <Nigel.Ward@ablawyers.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Nick White <nwhite@gordonlegal.com.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Philip Gardner <pgardner@gordonlegal.com.au>

Subject: RE: ABS Census Data on employment in Aged Care Industry - AM2020/99, AM2021/63 & AM2021/65 [MBC-VIC.FID4764043]

Dear Associate

I refer to the above matter and to your email below.

I anticipate receiving instructions to provide commentary on the ABS data attached to your email below.

However, I am currently on annual leave, as are my instructors from the HSU as well as Counsel.

Accordingly, I respectfully request that the HSU be provided a short extension until **12 January 2024**, to provide the relevant commentary on the ABS data.

The legal representatives for the active parties in these proceedings, are included in this email.

Kind regards

Penelope Parker
Senior Associate

mauriceblackburn.com.au

T 02 8267 0940

Gadigal

F 02 9261 3318

Level 29, 161 Castlereagh Street

E pparker@mauriceblackburn.com.au

Sydney NSW 2000

Liability limited by a scheme approved under Professional Standards Legislation.

Our office has moved.

Our Sydney office has moved to a fresh new space as of the 27th of November 2023.

SEASON'S GREETINGS

This office will close at 5:00pm, Thursday 21 December 2023 and re-open on Tuesday 2 January 2024.
Best wishes for the festive season.



Experience you can count on



Maurice Blackburn acknowledges the traditional custodians of the lands on which we work, and pays respect to their Elders, past and present.

We are a leading Australian law firm certified to the international ISO 9001:2015 quality standard.

We are proudly carbon neutral and committed to a sustainable environment. Please provide requested documentation in electronic format and consider the environment before printing this email.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error please notify the sender by reply email, delete the email, destroy any printed copy and do not disclose or use its information in any way. For additional information regarding Maurice Blackburn's privacy policy, [click here \(mauriceblackburn.com.au/privacy\)](http://mauriceblackburn.com.au/privacy)

From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>

Sent: Thursday, 14 December 2023 5:58 PM

To: Alana Rafter <Alana.Rafter@ablawyers.com.au>; Nigel Ward (ACCI) <Nigel.Ward@ablawyers.com.au>; Penelope Parker <PParker@mauriceblackburn.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Nick White <nwhite@gordonlegal.com.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Philip Gardner <pgardner@gordonlegal.com.au>

Subject: ABS Census Data on employment in Aged Care Industry - AM2020/99, AM2021/63 & AM2021/65

CAUTION: This email originated from outside of the organisation . Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear parties and representatives,

Please find attached the ABS data Justice Hatcher referred to during the proceedings on Thursday, 14 December 2023.

If a party wishes to make any comment on the data, they have until **5:00 PM (AEDT) on Thursday, 4 January 2024** to do so.

Regards,

Mahmoud Al Rifai
Associate to Justice Hatcher, President



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.j@fwc.gov.au

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011
www.fwc.gov.au

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Gadigal Country.